

MRS. CECILE HERZOG AND LUCILLE HERZOG
(AN INFANT)

APRIL 3 (legislative day, MARCH 30), 1942.—Ordered to be printed

Mr. ELLENDER, from the Committee on Claims, submitted the
following

REPORT

[To accompany H. R. 5449]

The Committee on Claims, to whom was referred the bill (H. R. 5449) for the relief of Mrs. Cecile Herzog and Lucille Herzog (an infant), having considered the same, report favorably thereon with the recommendation that the bill do pass with the following amendments:

On page 1, line 7, strike out the figures "\$7,500" and insert "\$3,750".

On page 1, line 7, strike out the figures "\$2,500" and insert "\$1,250".

The facts are fully set forth in House Report No. 1789, Seventy-seventh Congress, second session, which is appended hereto and made a part of this report.

[H. Rept. No. 1789, 77th Cong., 2d sess.]

The Committee on Claims, to whom was referred the bill (H. R. 5449) for the relief of Mrs. Cecile Herzog and Lucille Herzog (an infant), having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

The amendments are as follows:

Page 1, line 7, strike out the figures "\$10,000", insert in lieu thereof the figures "\$7,500".

Page 1, line 7, strike out the figures "\$5,000", insert in lieu thereof the figures "\$2,500".

The purpose of the proposed legislation is to pay the sum of \$7,500 to Mrs. Cecile Herzog, of 535 North Second Street, New Hyde Park, Long Island, N. Y., and to Mrs. Cecile Herzog as general guardian of Lucille Herzog, an infant, the sum of \$2,500, in full settlement of all claims against the United States for the death of her husband, George W. Herzog, who was killed by the collision of a United States Navy plane with a private plane piloted by Eddie A. Schneider, near Floyd Bennett Field, N. Y., on December 23, 1940.

STATEMENT OF FACTS

It appears that on December 23, 1940, a private plane, piloted by Eddie Schneider, as instructor, with George W. Herzog, as student, was struck by a Navy plane piloted by Ensign Kenneth A. Kuehner, United States Naval Reserve, in the vicinity of Floyd Bennett Field, Brooklyn, N. Y., causing the death of George W. Herzog. The evidence indicates that the first contact of the Navy plane with the private plane was when its propeller cut through the tail of the private plane and cut the tail completely off. This was confirmed by the fact that the tail surfaces of the private plane were found later to be completely severed, and by markings found on the propeller of the Navy plane. After the propeller of the Navy plane severed the tail surfaces of the private plane, the private plane pulled ahead for an instant. The Navy plane swung slightly to the left, overtook the private plane again, and its lower right wing struck the left wing of the private plane, causing it to immediately dive into a spin, into the water below. An inspection of the Navy plane revealed that the leading edges of both blades of the propeller had been gouged and nicked, apparently at the time the propeller severed the tail of the private plane. The lower right wing tip was severely damaged at the outer end. The record also shows that the Navy plane was actually being handled by a student with only 2½ hours dual-control experience. The Navy Department recommends enactment of this legislation.

Therefore, your committee feel that the widow of George W. Herzog is justly entitled to the sum of \$7,500 for the death of her husband, and \$2,500 for future benefits of the infant child, and recommends the enactment of this legislation. Appended hereto is the favorable report of the Navy Department, together with affidavits, and other pertinent evidence.

DEPARTMENT OF THE NAVY,
OFFICE OF THE SECRETARY,
Washington, November 10, 1941.

CHAIRMAN, COMMITTEE ON CLAIMS,
House of Representatives, Washington, D. C.

MY DEAR MR. CHAIRMAN: Reference is made to bill H. R. 5449, for the relief of Mrs. Cecile Herzog and Lucille Herzog (an infant), and to your letter of November 3, 1941, requesting the report and recommendation of the Navy Department relative thereto.

Bill H. R. 5449 would authorize the Secretary of the Treasury to pay Mrs. Cecile Herzog, of 535 North Second Street, New Hyde Park, Long Island, N. Y., the sum of \$10,000 individually, and the additional sum of \$5,000 to her as general guardian of Lucille Herzog, an infant 12 years of age, in full settlement of all claims against the United States for the death of Mr. George W. Herzog. The death of Mr. George W. Herzog, the husband of Mrs. Cecile Herzog, and apparently the father of Lucille Herzog, an infant 12 years of age, resulted from the collision of a United States Navy plane with a private plane piloted by Mr. Eddie A. Schneider, near Floyd Bennett Field, New York, N. Y., on December 23, 1940.

On July 12, 26, and November 1, 1941, the Navy Department wrote you regarding bill H. R. 5152 and bill H. R. 5290, both of which were for the relief of Mrs. Eddie A. Schneider. The facts of the collision, which resulted in the deaths of Eddie A. Schneider and Mr. George W. Herzog, as disclosed by the records of the Navy Department, are set out in the letters bearing the above dates of the Navy Department to you.

In brief the board of investigation found that because the Navy plane was the overtaking plane, the Navy plane technically was responsible for the collision between it and the private plane piloted by Eddie A. Schneider, which collision resulted in the deaths of Eddie A. Schneider and Mr. George W. Herzog.

The Navy Department has consistently taken the position that Mrs. George W. Herzog stands in the same position for purposes of reimbursement due to the death of her husband as that occupied by Mrs. Eddie A. Schneider.

The Navy Department, therefore, recommends that bill H. R. 5290 be amended to authorize the payment of the sum of \$5,000 to Mrs. Eddie A. Schneider, the additional sum of \$5,000 to Mrs. Cecile Herzog, and the additional sum of \$2,500 to Mrs. Cecile Herzog as general guardian of Lucille Herzog, an infant 12 years of

age, in full settlement of all their claims against the United States for the deaths of Mr. Eddie A. Schneider and Mr. George W. Herzog.

The Navy Department recommends against the enactment of bill H. R. 5449.

Sincerely yours,

FRANK KNOX,
Secretary of the Navy.

STATE OF NEW YORK,
County of Nassau, ss:

Cecile Herzog, being duly sworn, deposes and says that she resides at 535 North Second Street, New Hyde Park, Nassau County, N. Y.; that she is the widow of George W. Herzog, deceased, who sustained fatal injuries as the result of an airplane accident at Floyd Bennett Field on December 23, 1940. At the time of his death, George W. Herzog was 37 years of age; your deponent 39. Your deponent's husband was a carpenter by trade and prior to his death his earnings were from \$12 to \$14 per day as a carpenter. Deponent's husband, at the time of the fatal accident, was taking a refresher course and was taking flight instruction in this course at Baxter Flying Service, Inc., and had logged about 7 hours of dual instruction time, but had not soloed. Prior to this, however, deponent's husband had been issued a private pilot's certificate on August 1, 1930, and had retained a renewal of the same in 1933, which renewal certificate, however, he had allowed to expire in 1934. In September 1940 deponent's husband obtained a student's pilot certificate, and in November 1940 he passed the required written tests in the "commercial refresher course" of the civilian pilot training program.

The airplane in which your deponent's husband was a passenger at the time of the accident was piloted by Eddie Schneider, a flying instructor employed by Baxter Flying Service, Inc., which maintained a flying school at Floyd Bennett Field.

The Civil Aeronautics Board made a report as a result of their investigation of the accident on or about July 15, 1941, which report, upon information and belief, was given file number 4326-40 and docket number SA-31, a copy of which report is annexed hereto and made a part hereof and marked "Exhibit A."

Deponent and the decedent were married on May 21, 1927, and have one child of marriage, Lucille Herzog, an infant 12 years of age. At the time of the decedent's death, the decedent and your deponent had approximately \$100 in the Bank of New Hyde Park at New Hyde Park, Nassau County, N. Y. This sum represented the savings of the decedent and your deponent. The decedent also owned a small home in New Hyde Park at the time of his death for which your deponent had paid \$1,000 in cash and upon which home there was a \$4,000, 6-per-cent mortgage. Your deponent had no other source of income herself, but the earnings of her husband from his carpentry work; that prior to the fatal accident your deponent's husband had been employed at the World's Fair as a carpenter and had also been employed by Tully & DiNapoli, Inc., at Long Island City to perform carpentry work.

Deponent further states that the George W. Herzog mentioned in the report of the Civil Aeronautics Authority annexed hereto and marked "Exhibit A," is your deponent's husband and the father of their child.

Annexed hereto and made a part hereof and marked "Exhibit B" is the original receipted funeral bill from the Brockett Funeral Homes for the funeral expenses of your deponent's husband.

Deponent was entirely dependent upon the earnings of your deponent's husband for the support and maintenance of your deponent and their child. Your deponent and your deponent's husband had no other source of income.

CECILE HERZOG.

Sworn to before me this 24th day of October 1941.

[SEAL]

HOWARD T. HOGAN,
Notary Public, Nassau County.

EXHIBIT A

(File No. 4326-40 Docket No. SA-31)

REPORT OF THE CIVIL AERONAUTICS BOARD OF THE INVESTIGATION OF AN
ACCIDENT INVOLVING AIRCRAFT IN OTHER THAN SCHEDULED AIR CARRIER
OPERATION

A collision accident which occurred in the vicinity of Floyd Bennett Field, Brooklyn, N. Y., on December 23, 1940, about 1:25 p. m., resulted in fatal injuries to Pilot Eddie Schneider and Student Pilot George Herzog. The airplane in which they were flying, NC 27962, was demolished. Kenneth A. Kuehner, Ensign, United States Naval Reserve, who was the pilot of the other airplane, and his student, Franklin Newcomer, Seaman, second class, United States Naval Reserve, escaped injury. The airplane in which they were flying, N3N-3 2575, was, however, severely damaged.

The accident was reported to the New York City office of the Civil Aeronautics Board shortly after it occurred. Upon receipt of this notification the Board immediately initiated an investigation of the accident in accordance with the provisions of section 702 (a) (2) of the Civil Aeronautics Act of 1938, as amended, and sent an investigator to the scene of the accident.

A private hearing was ordered by the Board and was held at Floyd Bennett Field, Brooklyn, N. Y., on January 9, 1940. Robert W. Chrisp, attorney for the Board, presided as hearing examiner, and the following personnel of the Safety Bureau of the Board participated: Jerome Lederer, director; Frank E. Caldwell, Chief of the Investigation Division; and James N. Peyton, air-safety investigator.

On the basis of the evidence accumulated by the Board in its investigation, the Board herewith makes its report in accordance with the provisions of the Civil Aeronautics Act of 1938, as amended.

SUMMARY AND ANALYSIS OF EVIDENCE

Pilots.—Pilot Eddie Schneider held a commercial-pilot certificate with 1 Land, 2S Land, and Instructor ratings. He had logged a total flying time of 2,233 hours 30 minutes, of which approximately 200 hours had been in the type of airplane which he was flying at the time of the accident. He was employed as a flight instructor by Baxter Flying Service, Inc., which maintained a flying school at Floyd Bennett Field. It was stated by his associates that he was a very good pilot and instructor, and that he was fully cognizant of the dangerous traffic conditions in the vicinity of Floyd Bennett Field. A witness who last saw him about noon on the day of the accident testified that Schneider had then appeared to be in good physical and mental condition.

George Herzog, who was flying with Schneider at the time of the accident, had been issued a private pilot certificate on August 1, 1930. In his application for a renewal of this certificate on July 14, 1933, he stated that he had logged 252 hours of flying time. He allowed this certificate to expire, however, on July 31, 1934. In September 1940, he obtained a student pilot certificate and in November 1940, he passed the required written tests in the commercial refresher course of the civilian pilot training program. At the time of the accident he was taking flight instruction in this course at Baxter Flying Service, Inc., and had logged about 7 hours of dual instruction time, but had not soloed.

Ensign Kuehner had received his flight training at the naval air station, Pensacola, Fla. At the time of the accident he was assigned to duty as a flight instructor at the United States Naval Reserve aviation base, Floyd Bennett Field. He had logged a total flying time of approximately 1,500 hours. Kuehner was aware of the congested traffic conditions in the vicinity of the field.

Newcomer, who was flying with Kuehner, had just begun flight training at the Naval Reserve aviation base, Floyd Bennett Field, and had logged at the time of the accident only 2 hours of dual instruction time.

Airplanes.—The airplane in which Schneider and Herzog were flying, NC 27962, was a Piper, model J3F-60, powered with a 60-horsepower Franklin engine. It was a high-wing monoplane, painted yellow, which normally cruised at 65 or 70 miles per hour. It had been purchased from the manufacturer by Archie Baxter, the operator of the Baxter Flying Service, Inc., in May 1940. Since its purchase it had been flown a total of approximately 515 hours. Subsequent to the last periodic inspection on December 16, 1940, the airplane had been flown a total of 14 hours. The total operating time of the engine was 536 hours. The airplane

and the engine were apparently in good operating condition on the day of the accident.

The airplane in which Ensign Kuehner and Seaman Newcomer were flying was a Navy trainer, N3N-3 No. 2575, powered with a Wright 235-horsepower engine. It was a two-place, open cockpit biplane with a cruising speed considerably higher than that of the Piper Cub.

The flights.—Schneider and Herzog had taken off from Floyd Bennett Field on the day of the accident for a 1-hour instruction flight. They had intended to perform spins, lazy 8's, and chandelles in an area approximately 1 mile northeast of the field, and to return to the airport to perform 360° approaches, 180° approaches, and spot landings. Apparently returning to the airport to land, their airplane was seen flying toward the west in the traffic lane along the north boundary of the field. The wind at the time was from the north-northwest 10 miles per hour so that their landing would probably have been made from the south on or alongside the north-south runway. Kuehner and Newcomer, who were also returning to the airport after a flight instruction period, entered the traffic lane along the north boundary of the field at a point approximately a quarter mile from the northeast corner of the field, and flew toward the west behind Schneider and Herzog. Newcomer, who was in the rear cockpit, was flying the Navy plane. Both airplanes were flying at approximately the same altitude at this time.

When it was near the northwest corner of the field, the Piper flown by Schneider and Herzog made a left turn and flew in a southerly direction along the west boundary of the airport. It was at an altitude of approximately 600 feet at this time. The Navy plane, which was then some distance behind the Piper, also made a left turn when it reached the vicinity of the northwest corner of the field. Although one witness stated that both turns were made above approximately the same point, most of the testimony indicates that the Navy plane turned before reaching the point at which the Piper had turned. After making this turn it flew along the west side of the field on a heading slightly west of south. It was at approximately the same altitude as the Piper, possibly slightly higher.

As the two airplanes flew along the west boundary of the field, both apparently in level flight, the Navy plane overtook the Piper from the left at an angle of approximately 25°. The Piper was probably flying at a speed of about 65 or 70 miles per hour and the Navy plane at a speed of about 80 miles per hour or slightly higher. Kuehner stated that when he first saw the Piper it was directly ahead of him, and he took over the controls in an attempt to maneuver so as to avoid it but was unable to do so. Newcomer stated that he had been looking at his instruments after completing the turn and failed to see the other airplane until after he felt Kuehner take the controls from him. When he looked up immediately after this, he saw the other airplane directly in front of the propeller of his plane. Just prior to the collision it appeared to witnesses that the Navy plane banked to the left and pulled up slightly.

The evidence indicates that the first contact of the Navy plane with the Piper was when its propeller cut through the tail surfaces of the Piper and cut the tail completely off. This was confirmed by the fact that the tail surfaces of the Piper were later found to be completely severed, and by markings found on the propeller of the Navy plane. After the propeller of the Navy plane severed the tail surfaces of the Piper, the Piper pulled ahead for an instant. The Navy plane swung slightly to the left, overtook the Piper again, and its lower right wing struck the left wing of the Piper. The Piper rolled to the right into a nearly inverted attitude and fell off into a spin to the right. As it was entering this right spin, its left wing folded up against the side of the fuselage. Its right wing folded back during the spin. The Piper then dived into the water of Deep Creek, at a point approximately 1,500 feet west of the west boundary of the field, and was submerged. After the collision the Navy plane entered a spin to the right, made approximately one turn in this spin, and then recovered and made a normal landing.

The plane flown by Schneider and Herzog, NC 27962, was completely demolished. An inspection of the Navy plane, N3N-3 No. 2575, revealed that the leading edges of both blades of the propeller had been gouged and nicked, apparently at the time the propeller severed the tail of the Piper. The lower right wing tip was severely damaged at the outer end.

Traffic control.—For some time prior to the accident air traffic had been very congested in the vicinity of Floyd Bennett Field. There were about 125 airplanes based at the field, and these included many different makes of varying weights and horsepower, Lockheeds, Stinsons, Wacos, Luscombes, and Piper Cubs. Six approved civilian flying schools were operating at the field and they

employed a total of 34 airplanes in their instruction work. Naval Reserve and Marine Reserve squadrons were also training at the field. The field was used as a base by the United States Coast Guard and as an alternate airport by the commercial air lines. It was frequently utilized by itinerant flyers. Mr. Kenneth P. Behr, the manager of operations at the field for the Division of Aviation, New York City, stated that he had seen as many as 30 airplanes maneuvering around the field during the most congested periods on Saturday afternoons and Sundays. Another witness stated that he had counted 27 airplanes operating in the vicinity of the field at one time on a normal day.

There was, prior to the accident, neither an adequate set of airport traffic rules nor adequate enforcement of the existing rules. Because of the congestion and because of the lack of adequate rules and enforcement a hazardous traffic condition existed at the airport. Despite the diversity of the types of airplanes based at the airport there was no provision for the segregation of light and heavy airplanes in different traffic lanes. There had been numerous near collisions in the air in the vicinity of the airport because of this lack of segregation. No provision had been made for a uniform take-off and landing procedure. There was a wind T at the northwest corner of the field and there were several wind socks at different locations on the airport. It frequently happened that the wind T and socks indicated different wind conditions at the same time. Although many pilots ordinarily made landings and take-offs into the wind as indicated by the wind T, others frequently followed one of the wind socks and thus interfered with other planes landing or taking off in reliance on the indications of the wind T or of another wind sock. The testimony also revealed numerous instances in which one airplane had taken off or landed crosswind directly across the path of another airplane taking off or landing. No procedure was prescribed for the practice of Navy pilots who employed the field as a place to drop tow sleeves which had been used in target practice. Although it appeared that the Navy flyers, when dropping tow-target equipment, usually made an effort to drop such equipment in a part of the field which was not in use, there had been at least one instance of another airplane striking the tow cable or sleeve while taking off or landing. Frequent complaints had been filed at the operations office of the field with respect to violations of the rules by both Navy and civilian pilots, but the filing of these complaints apparently had not resulted in any revision of the airport rules which would reduce the hazards incident to flying near the field.

About 3 months before the accident Mr. Behr had discussed with a Civil Aeronautics inspector the advisability of drafting a new set of airport traffic rules in an effort to improve traffic conditions. On October 31, he decided to call a conference of hangar permittees and representatives of the commercial flying schools and military services to consider the matter. At the conference it was agreed that a new set of airport rules should be drafted and should provide, among other things, for the segregation of light and heavy traffic in different traffic lanes, both counterclockwise. The new traffic rules and sketches showing the segregation plan were then drawn up. The rules and regulations and sketches were approved during the latter part of December to become effective as of January 1.

These new airport traffic rules provided that planes of 100 horsepower or less should take off from and land on that half of the field which is to the left when heading into the wind. Planes of greater horsepower were required to take off from and land on the right side of the field. It was provided that airplanes of 100 horsepower or less should fly in the traffic lane around the airport at an altitude of 500 feet and planes of more than 100 horsepower should fly at an altitude of 800 feet, both in a counterclockwise direction. It was also provided that all take-offs and landings should be governed by the wind T in the northwest section of the field. Landings were required to be made into the wind in the area designated for the type of airplane involved.

Analysis of the evidence.—It is apparent that Kuehner and Newcomer both had ample opportunity, when they were flying along the north and west boundaries of the airport, to observe the other plane as it flew almost directly in front of them and at the same altitude. Kuehner merely stated that he did not see the other plane until immediately before the collision. Newcomer had been watching his instruments to observe the effects of his left turn and apparently continued to watch them for too long a period. It was Kuehner's responsibility as instructor to watch for other airplanes in the vicinity and in the traffic lane. In view of the congested traffic condition in the vicinity of the field and of the fact that Newcomer had logged only 2 hours' dual instruction time Kuehner should have exercised the utmost care in watching for such other airplanes. It is apparent

that the probable cause of the accident was his carelessness in failing to exercise such care.

The lack of adequate traffic rules in the vicinity of the airport was a contributing factor. If the proposed traffic rules had been promulgated and made effective more expeditiously, the Navy plane would have been flying at 800 feet and the Piper would have been flying at 500 feet, had their pilots been obeying these traffic rules, and the accident would thus have been averted.

PROBABLE CAUSE

Upon the basis of all the evidence available to the Board at this time we find that the probable cause of the accident was the carelessness of Ensign Kuehner while circling the airport, in failing to observe the other airplane in time to avoid it.

CONTRIBUTING FACTOR

We further find that the lack of, and delay in prescribing adequate airport traffic rules contributed to the accident.

By the Board:

_____,
Secretary.

EXHIBIT B

BROCKETT FUNERAL HOMES,
Southampton, New York.

To Mrs. George W. Herzog, New Hyde Park, N. Y.

For the funeral expenses of George W. Herzog-----	\$150. 00
Cash expenditures-----	65. 25

Total-----	215. 25
Received payment, March 20, 1941.	

EVERETT B. BROCKETT.
Per GERALD T. ADAMS.

Thank you.

Professional services in arranging for funeral and conducting same, use hearse services to train and funeral, use of family car, use of funeral home and grave equipment, together with grey cloth-covered casket and pine outer case painted gray-----

\$150. 00

Cash expenditures:

Expenses in Brooklyn, including the preparation of remains, making removal and shipping to Westhampton Beach; securing the necessary removal and shipping permit-----

43. 85

Phone calls and transcripts-----

6. 40

Opening grave in Westhampton Cemetery-----

15. 00

Total-----	215. 25
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WESTHAMPTON CEMETERY ASSOCIATION,
Westhampton, N. Y., December 24, 1940.

Mrs. Cecile Herzog:

Lot No. 414-----	\$65
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Paid.

W. H. CEMETERY ASSOCIATION,
DAVID YOUNG, Treasurer.

